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Hearing Date and Time:  
November 30, 2015 at 2:00 p.m.

Objections Due:  
November 13, 2015 at 2:00 p.m.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

33 Peck Slip Acquisition, LLC, et al.

Chapter 11

Case No. 15-12479 (JLG)  
(Jointly administered)

Debtors.

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**AMENDED OBJECTION OF THE NEW  
YORK CITY DEPARTMENT OF FINANCE  
TO DEBTORS' PLAN CONFIRMATION  
DATED OCTOBER 16, 2015**

The New York City Department of Finance (the "City"), by its attorney ZACHARY W. CARTER, Corporation Counsel of the City of New York, hereby submits its Amended Objection to Debtors' Plan Confirmation dated October 16, 2015 and states as follows in support thereof:

1. On November 30, 2015, the City filed the Objection of the New York City Department of Finance to Plan Confirmation and Proposed Tax Exemption Under 11 U.S.C. § 1146(a) (ecf # 59) (the "Original Objection to Confirmation"). On October 2, 2015, the City also filed the Supplemental Objection of the New York City Department of Finance to Debtors' Plan Confirmation and to Amended Plan and Disclosure Statement (ecf # 72) (the "Supplemental Objection").

2. The Debtors subsequently amended their Chapter 11 plan and disclosure statement and sought the City's input with respect to the matters the City had objected to in its Original and Supplemental Objections to Confirmation and to the approval of the amended disclosure statement. The Debtors amended their original plan and disclosure statement to incorporate a number of the comments and changes requested by the City. The Debtors also sought and obtained approval for the payment of Gemini's pre-petition real estate taxes which were outstanding. On November 9, 2015, this Court approved the Stipulation and Agreed Order Regarding Payment of Secured Real Property Taxes By Gemini 37 West 24<sup>th</sup> Street MT, LLC (ecf # 140). Pursuant to this Stipulation and Agreed Order, the Debtors paid the Gemini pre-Petition real estate taxes with interest thereon.

3. The Debtors' Joint Liquidating Plan Dated October 16, 2015, re-filed yesterday in clean format (ecf #156) and the Disclosure Statement Concerning Debtors' Joint Liquidating Plan Dated October 16, 2015, re-filed yesterday in clean format (ecf # 155) reflect all the changes the City requested, including the payment of the Gemini pre-Petition real estate taxes, except for the City's objection to the Debtors' request for an exemption from stamp taxes under Section 1146(a) of the Bankruptcy Code. Despite negotiations on other disputed issues and the fact that the City advised Debtors' counsel on a number of occasions that the City was still objecting to the confirmation of the (amended) Plan and Disclosure Statement dated October 16, 2015, the Debtors have been unwilling to withdraw or to make any changes to the improper stamp tax provision in the Plan.

4. Even though the City has not been in a position to review every single pleading, motion or declaration filed by the Debtors and other parties in interest for the past month and a half in these heavily contested Chapter 11 cases, or to participate in every

conference call or court proceeding, the City shares the concerns expressed by the United States Trustee with respect to the lack of timely and proper disclosure and still believes that (i) these Chapter 11 cases were not filed in good faith so as to be entitled to a stamp exemption under Section 1146(a); and (ii) that the tax exemption, as requested, is improperly broad, illegal and in violation of Supreme Court precedent, as discussed in detail in the City's Original Objection to Confirmation, at point II. The City, therefore, incorporates its Original Objection to Confirmation (ecf # 59) by reference herein, which remains outstanding and unresolved with respect to the transfer tax issue, and re-files such Objection as an attachment hereto.

To the extent the Court is inclined to authorize the sale of the Debtors' hotels, the City respectfully request – at a minimum – that the full amount of the estimated real property transfer tax and any other stamp tax that may be requested under the Plan, which could exceed \$5 million, be escrowed in an interest-bearing account pending confirmation and any requests for a stay and/or appeals therefrom. Considering the lack of disclosure in this case and the fact that La Mack and Massaro were ordered to post bonds in the amount of \$10 million and \$5 million to cancel the Notices of Pendency for the Jade Hotel and Wyndham Hotel, respectively, which apparently they failed to do, this request is not unreasonable. The Debtors' Chapter 11 filings were technically in violation of the state court order which denied their request for a temporary injunction<sup>1</sup> which should be considered as part of the Court's "good faith" analysis.

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<sup>1</sup> See Obeid's Motion for Relief from the Automatic Stay filed on November 6, 2015 at p. 12, fn. 5 (ecf # 137).

**CONCLUSION**

For all of these reasons, the City of New York continues to object to Plan Confirmation and the Proposed Tax Exemption Under Section 1146(a).

Dated: New York, New York  
November 13, 2015

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By: /s/Gabriela P. Cacuci  
Gabriela P. Cacuci (GC-4791)

**CERTIFICATE OF SERVICE**

I, Gabriela P. Cacuci, an attorney duly admitted to practice before the Courts of the State of New York do hereby certify that on November 13, 2015, I served true copies of the Amended Objection of the New York City Department of Finance to Plan Confirmation dated October 16, 2015 on the parties listed below by facsimile transmission and/or electronic mail:

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Dated: New York, New York  
November 13, 2015

/s/Gabriela P. Cacuci  
GABRIELA P. CACUCI

